

Decision 01-10-034

October 10, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038

Emergency Application of Pacific Gas and Electric Company (U 39 E) to Adopt a Rate Stabilization Plan.

Application 00-11-056

Petition of The Utility Reform Network for Modification of Resolution E-3527.

Application 00-10-028

ORDER DENYING REHEARING OF DECISION 01-09-015

I. SUMMARY

This Decision denies PG&E's application for rehearing of Decision (D.) 01-09-015. Decision 01-09-015 ordered PG&E to enter into a servicing agreement with the Department of Water Resources (DWR), and approved the agreement proposed by DWR, with certain changes. The agreement sets forth the terms and conditions under which PG&E will provide transmission and distribution of DWR-purchased electricity, as well as billing, collection and related services. In return, DWR is to pay PG&E's incremental costs. Such agreement is authorized by AB1X, enacted in January 2001 in response to the California energy crisis.

PG&E filed a timely application for rehearing of D.01-09-015 on September 20, 2001.¹ On October 2, 2001, DWR filed comments in response to PG&E's application for rehearing. We find that PG&E's allegations of legal error are without merit and deny PG&E's application for rehearing.

II. DISCUSSION

As a preliminary matter, we note that PG&E attempts to "incorporate by reference" into its application for rehearing three sets of comments it previously filed in this proceeding. PG&E states that most of the reasons behind its five grounds for rehearing have been set forth in these comments, and it attempts to summarize those reasons "for the purpose of providing context for the current request for rehearing." (PG&E App. at 2.) However, Public Utilities Code section 1732 and CPUC Rule of Practice and Procedure 86.1 require applications for rehearing to "set forth specifically" the grounds for error. Rule 86.1 further cautions applicants that vague assertions as to the record or law without citation may be accorded little attention. Parties raise numerous issues in their comments that have nothing to do with identifying legal error and it is not for the Commission to speculate as to which of the myriad issues a party actually intends to raise on appeal. Generally referring to comments or other pleadings previously filed in the proceeding does not meet the requirements of § 1732 and Rule 86.1. However, to the extent PG&E's application for rehearing specifically identifies arguments raised in comments, and where those comments clearly raise a legal issue, we will attempt to address PG&E's claims.

¹ Decision 01-09-015 is subject to Public Utilities Code §1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Public Utilities Code §1768 (procedures for judicial review) (Stats. 2001-2002, First Extraordinary Session, Ch. 9.)(SB1X 31).

1. The Commission did not act in excess of its authority.

Turning to the merits of PG&E's application for rehearing, PG&E first argues that the Commission acted in excess of its jurisdiction because during the negotiations between DWR and PG&E, the Commission demanded changes to the agreement that were not supported by either party. According to PG&E, DWR asked the Commission for an order under Section 80106(b) only after negotiations stalled on those issues introduced solely by the Commission. As such, PG&E claims that the Commission exceeded its authority because AB 1X requires the Commission to defer while DWR and the utilities seek agreement by contract.

PG&E also argues that the Commission exceeded its jurisdiction by not suspending its proceeding after July 2, when DWR asked the Commission to defer any decision on the servicing agreements until mid-August 2001. PG&E claims the Commission should have deferred, given the opportunity for additional negotiations and PG&E's stated desire to further negotiate.

PG&E further claims that the Commission exceeded its jurisdiction by attempting to force the parties into a servicing agreement that modifies several points discussed by the parties during negotiations. According to PG&E, AB 1X makes it clear that where DWR and PG&E mutually propose services or agreements, the Commission's authority is limited to implementing the proposals or agreements.

PG&E's arguments are unconvincing. Nothing in AB 1X prohibits the Commission from having input into the negotiation process. Whether the Commission or some other third party had a role in shaping the terms of the agreement is irrelevant. Once DWR made its request, we were authorized to order the utility into a servicing agreement under Water Code § 80106(b). Moreover, this Decision is an order of the Commission having the effect of a servicing agreement. To suggest that we do not have any control over the content of the agreement, and thus the content of our own orders, is to deny our broad authority

under the Public Utilities Code to regulate the terms of service of a utility subject to our jurisdiction. PG&E's arguments restricting the Commission's authority in this regard constitutes an unreasonable interpretation of AB 1X.

Likewise, PG&E's argument that the Commission should have suspended its proceeding after July 2 is also without merit. Water Code § 80106(b) provides that the Commission shall order the relevant utility into a servicing agreement at the request of DWR. Under applicable law, neither a stated desire to continue negotiations, a failure to exhaust all attempts to negotiate a voluntary servicing agreement, or any other reason cited by PG&E abrogate the Commission's authority to order PG&E into an agreement once it received the request by DWR. In addition, as stated in the Decision, the PG&E/DWR servicing agreement decision was one of the items that was postponed in response to the July 2, 2001 letter to Commissioner Lynch from DWR, the Department of Finance, and the State Treasurer. This was done in order to take advantage of new legislation providing for expedited judicial review of Commission orders implementing AB 1X. PG&E's claim that the "Commission showed no willingness to defer" is therefore without merit.

2. The Commission proceeded in the manner required by law.

PG&E next argues that the Commission "failed to respect the directives of AB1X and federal bankruptcy law." However, PG&E's application for rehearing does not specify what "directives" of AB1X or bankruptcy law the Commission has failed to follow. Nor does PG&E refer to specific comments on this point. As such, the argument fails to meet the requirements of Commission Rule of Practice and Procedure 86.1 and Public Utilities Code § 1732.

PG&E further argues that the Commission erred by ordering PG&E to enter into the servicing agreement prior to resolving issues concerning DWR and PG&E's revenue requirement. The Commission has addressed this argument, and correctly concluded that the conclusion of the revenue requirement proceedings is

not a prerequisite to a servicing agreement. PG&E fails to demonstrate how the specific outcomes of the revenue requirements for PG&E and DWR are material to the merits of the servicing agreement. The servicing agreement does not specify how much PG&E collects on behalf of DWR, or the amount PG&E collects on its own account. PG&E's claim that the resolution of DWR's revenue requirement is necessary to evaluate the merits of the servicing agreement is unconvincing given the fact that PG&E is already delivering DWR-purchased electricity and is already collecting funds on behalf of DWR. The servicing agreement merely sets forth the specific details of that arrangement. PG&E's challenge, therefore, would be either to past decisions establishing interim rates for DWR power, or future decisions establishing DWR's revenue requirement.

3. PG&E's claim that the Decision is not supported by substantial evidence is unfounded.

PG&E next argues that several of the Commission's findings are not supported by substantial evidence in light of the whole record. According to PG&E, "the full extent of the Commission's error is set forth in PG&E's September 4 Comments, including Appendix A of those comments, which provides a comprehensive list of the inappropriate findings." (PG&E Application for Rehearing at 7). However, Appendix A is merely a list of recommended revisions to the Findings of Fact and Conclusions of Law of the Decision. It is not clear from the application for rehearing which of the findings PG&E disputes as lacking adequate foundation, and accordingly its application for rehearing fails to meet the requirements of Rule 86.1 and § 1732.

PG&E's application for rehearing does specifically point to one issue concerning the separate line item for DWR charges. In the Decision, the Commission concluded that "A separate line item for DWR charges is likely to cause customer confusion." (D.01-09-015, Finding of Fact No. 10.) PG&E argues this finding has no basis in the record.

Again, the servicing agreement is an order of the Commission. The Commission is not prohibited from putting this term in the order. The Commission was concerned that, because of the way DWR charges were set, putting a separate line for DWR charges on customers' bills might not properly convey energy conservation messages, and may lead to customer confusion. This is not an issue on which empirical evidence is required, but rather is based on the Commission's extensive regulatory expertise. The fact that PG&E did not agree with the Commission's approach does not support an allegation of legal error in the Decision.

4. The Decision was not an abuse of discretion.

PG&E claims that the Commission has recently proposed a number of decisions "that reveal that the Commission has departed from its independent, Constitutionally-prescribed role and has become an agent for the pecuniary interests of DWR and other state agencies." (PG&E Application at 8.) PG&E also claims that the Commission acted unlawfully by granting DWR's request without providing an adjudicatory hearing or other process requirements applicable to compliance and enforcement matters pursuant to Public Utilities Code §§ 1701.1 and 1701.2.

PG&E's arguments are without merit. The Commission is and has been carrying out its statutorily prescribed duties under AB 1X, and other applicable law. In implementing AB 1X, the Commission is acting in its quasi-legislative capacity, and an adjudicatory hearing is not required. The Commission considered DWR's June 27, 2001 request for a servicing agreement in consolidated docket A.00-11-038, et al., in which the Commission has already complied with §§ 1701.1 and 1701.2. Even if PG&E's argument had merit, if PG&E felt that consideration of this matter in this docket was inappropriate, it should have raised its concerns earlier. Since it did not, it has waived those claims.

5. The Decision does not violate PG&E's constitutional rights.

PG&E claims that its constitutional rights were violated because the Decision and the servicing agreement effect an unlawful taking and have failed to provide PG&E due process in participating in key regulatory proceedings that affect the servicing agreement (i.e. the DWR revenue requirement and the DWR rate agreement). PG&E's arguments fail. PG&E has had notice and an opportunity to be heard with respect to the matters covered in this Decision. As explained above, resolution of DWR's revenue requirement and the DWR rate agreement are not necessary to evaluate the merits of the servicing agreement.

As to PG&E's takings argument, the Decision recognizes PG&E's right to be reasonably compensated for its services, in accordance with Water Code section 80106. PG&E's argument that the agreement fails to provide adequate compensation apparently stems from the fact that DWR did not commit to procure PG&E's full "net short" position, as it did with the other utilities. The agreement provides for the incremental costs associated with providing billing, collection and related services to DWR, as required by AB 1X. Whether DWR covers PG&E's entire net short is a separate issue to be determined by DWR and PG&E, and PG&E fails to demonstrate how the lack of successful negotiation on this issue constitutes an unlawful taking.

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III. CONCLUSION

PG&E's application for rehearing fails to demonstrate legal error in Commission Decision 01-09-015.

THEREFORE, IT IS ORDERED:

1. PG&E's Application for Rehearing of Decision 01-09-015 is denied.

This order is effective today.

Dated October 10, 2001 at San Francisco, California.

LORETTA M. LYNCH
President
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I dissent.

/s/ HENRY M. DUQUE
Commissioner